

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH J. STANISIC,

Plaintiff,

v.

NANCY A. BERRYHILL,

Defendant.

Case No. [17-cv-07176-SI](#)

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

Re: Dkt. No. 16

Plaintiff Joseph J. Stanisic, who is appearing pro se, has filed this lawsuit, citing 42 U.S.C. § 405(g), which authorizes judicial review of the final decisions of the Commissioner of Social Security. Dkt. No. 1. Plaintiff brings two claims for negligence. Defendant Nancy A. Berryhill has filed a motion to dismiss. Dkt. No. 16.

This Court previously dismissed negligence claims that plaintiff brought against defendant in a Social Security appeal plaintiff filed in 2014. *See Stanisic v. Colvin*, No. 14-cv-3744-SI (N.D. Cal. Aug. 18, 2014). There, the Court found that plaintiff did not exhaust his administrative remedies under the Federal Tort Claims Act prior to bringing the negligence claims against defendant. The Court dismissed the negligence claims without prejudice to plaintiff's re-filing the claims after he exhausted his administrative remedies. The Court retained jurisdiction over plaintiff's appeal regarding his Social Security retirement benefits, and ultimately entered judgment in favor of defendant and against plaintiff.

Defendant now moves to dismiss plaintiff's complaint in this case, arguing that the Court lacks subject matter jurisdiction because "Plaintiff did not receive a 'final decision' after a hearing, subject to judicial review, as specified in the Social Security Act, 42 U.S.C. § 405(g)." Dkt. No. 16 at 1. Defendant states that, in the time since the Court dismissed plaintiff's prior case, plaintiff took

1 no further action in any administrative process; rather, according to defendant, “the next action  
2 Plaintiff took was to file the current complaint.” *Id.* at 4.

3 On August 2, 2018, plaintiff requested the Court grant him a ninety-day extension of time  
4 to respond to the motion to dismiss, stating that he had an upcoming medical procedure and needed  
5 more time to determine whether to file an opposition or a statement of non-opposition. Dkt. No. 18.  
6 The Court granted plaintiff’s request. Dkt. No. 19. On October 31, 2018, plaintiff filed a statement  
7 of non-opposition. Dkt. No. 20. He notes that he underwent his medical procedure with excellent  
8 results, and “hereby files this Notice to the Court confirming his non-opposition to defendant Nancy  
9 A. Berryhill’s Motion to Dismiss (MTD).” *Id.* at 2.

10 In light of the procedural history in plaintiff’s prior case and plaintiff’s present notice of non-  
11 opposition, the Court GRANTS defendant’s motion to dismiss. The Clerk is directed to close the  
12 file in this case.

13  
14 **IT IS SO ORDERED.**

15 Dated: November 5, 2018



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SUSAN ILLSTON  
United States District Judge